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CITY AND COUNTY OF SAN FRANCISCO

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TO: CALFED Bay-Delta Program
Attention: Rich Breitenback

Fax: 916-654-9780

FROM: DONN W. FURMAN

RE: Comments on Revised Phase II Report and proposed Water Transfer Program

MESSAGE:

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September 23, 1999

VIA FACSIMILE (916-654-9780) AND U.S. MAIL

CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, California 95814
Attention: Rich Breitenbach

Re: Comments on Revised Phase II Report and proposed Water Transfer Program

Dear Mr. Breitenbach:

I write on behalf of the San Francisco Public Utilities Commission ("SFPUC") to submit the following comments on CALFED Bay-Delta Program's Revised Phase II Report and proposed Water Transfer Program Plan. The SFPUC incorporates by reference our July 1, 1998 comments on the 1998 draft Programmatic EIS/EIR for the CALFED Bay-Delta Program.

Water transfers are one of the common elements in the alternatives currently being evaluated by CALFED. Through its proposed water transfer program plan ("the proposed Program") CALFED proposes to "facilitate water transfers and the further development of a state-wide water transfer market," (Water Transfer Program Plan, page 1-1) while addressing potential impacts from water transfers. Water transfers and exchanges also loom large in CALFED's plans to supplement instream and Delta flows above regulatory baselines (Revised Phase II Report, pages 36 & 57), provide alternatives high quality water sources for urban agencies (Id. at pages 45-46), and implement early proposed actions under the Environmental Water Account (Id. at pages 95-96).

As noted above, the SFPUC commented on earlier drafts of the proposed Program. The current version of the proposed Program shows significant progress and better organization. The SFPUC appreciates those changes made to the proposed Program in response to our previously expressed concerns. Nevertheless, the SFPUC remains concerned about four aspects of the proposed Program: (1) the adequacy of the proposed Program to produce real beneficial impacts on water marketing, and hence water supplies; (2) the possibility that the additional review processes and hurdles set forth in the proposed Program will actually hinder rather than facilitate water transfers; (3) the conflict of interest inherent in empowering agencies participating in the market to also act as decision-makers on programmatic determinations that will affect all water transfers; and (4) the vagueness of the process for linking project benefits, for example allocation of new capacity, with water user financing. Each concern is briefly explained below.

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The primary function of the proposed Program at this point appears to be resolution of a number of outstanding, hotly debated issues with respect to water transfers. These issues include the definition of transferable water (including what qualifies as "conserved water" that may be transferred), carriage water requirements, reservoir refill rules, rights to wheeling capacity and the recoverable costs of wheeling. Resolution of these issues could have significant benefits for the transfer market. Uniformity of treatment and resolution of ongoing disputes that are now resolved on an *ad hoc* basis are laudable goals. In addition, development and dissemination of additional information about wheeling capacity in the projects could be useful. The SFPUC is not convinced, however, that the manner in which CALFED is now approaching these tasks will improve water supply and reliability, or conditions in the Delta.

CALFED intends to develop further information and then determine the elements of the proposed Program after the public review process closes, perhaps, but not necessarily, in advance of issuance of the final EIR/EIS. This procedure necessarily limits public review, and raises questions about the adequacy of environmental review because impacts will not be known and evaluated before the determinations that may cause the impacts.

Many of the foregoing determinations will apparently be made by the CALFED agencies themselves. This may present a conflict of interest. CALFED repeatedly expresses concerns about a "conflict of interest" in the proposed Program with respect to the Clearinghouse (page 4-5). Such a concern is even more compelling with respect to the establishment of uniform rules for transfers.

Several of the CALFED agencies actively participate in the water transfer market and associated forums. These agencies purchase water for myriad purposes including instream flow and water supply, oppose transfers of others before regulatory agencies, and own facilities that are absolutely critical for the wheeling of water transfers. These CALFED agencies certainly have rights and concerns that they are entitled to defend and advocate. However, it is neither appropriate nor equitable to cast these agencies into the role of decisionmakers for programmatic determinations of great potential consequence to other participants in the transfer market. These CALFED agencies stand to significantly benefit if transfer or wheeling determinations are made in particular fashions, and hence cannot be expected to be objective. An evaluation and decisionmaking process for transfers and wheeling must respect all interests and avoids conflicts, while enabling CALFED agencies to participate in the same manner--but with no greater authority--than any other water right holder, or transfer or wheeling proponent.

The proposed Program adds a number of processes, procedures and additional analyses to the water transfer review process. The SFPUC appreciates that all stakeholders are intensely interested in transfers and wheeling, and that some of these transactions present complex issues. Unfortunately, the important goal of expediting transfers can become easily lost in this context. CALFED should avoid impeding long-term transfers through its proposed Program. The SFPUC hopes that CALFED will develop broader categories of transfers capable of receiving expedited

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treatment perhaps with conditions fashioned in advance to address drawbacks common to such broader categories.

The CALFED Bay-Delta program proposes to increase cross-Delta capacity, the permitted pumping capacity of the SWP and CVP, and, perhaps, create additional storage and wheeling capacity in CALFED instigated facilities. The current document improves on previous drafts in the manner in which it addresses the issues of allocation of increased capacity. However, resolution of the allocation question appears to remain a future task. Project benefits must be broadly available, and not limited to participants of a particular water project or particular purposes of use. This is particularly true given the importance of public funding for CALFED programs, and will be even more important in the event that future costs are proposed to be spread among a broad base or constituency. The SFPUC cannot comment on the financing alternatives identified given the uncertainty with respect to allocation of benefits. Further opportunity for public comment will be necessary to ensure that there is a logical correlation.

Thank you for consideration of our comments.

Very truly yours,

LOUISE H. RENNE
City Attorney



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Deputy City Attorney

cc: Andy Moran
Michael Carlin
Vicki Clayton
Martha Lennihan